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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------------|
| 10/593,984 | 09/25/2006 | Gerhard Meixner | 3825 | 3404 |
| 7590 Michael J Striker Striker, Striker & Stenby 103 East Neck Road Huntington, NY 11743 | | | EXAMINER LOPEZ, MICHELLE | |
| | | | ART UNIT 3721 | PAPER NUMBER |
| | | | MAIL DATE 12/11/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/593,984 | MEIXNER ET AL. | |
| | Examiner | Art Unit | |
| | Michelle Lopez | 3721 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/4/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on 9/09/09.
2. Claims 2, 10, and 12-13 are canceled.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 12/04/09 is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the scotch yoke slider crank must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

Art Unit: 3721

be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The abstract of the disclosure is objected to because it is in claim format. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1, 3-9, 11, and 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In claim 1, it is unclear as to how the slider crank 23 operates. It is difficult to discern how does the slider crank 23 slides with respect to the ball 24 and the cam 14, if there is no space to allow such sliding movement.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 3-9, 11, and 14-16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

Art Unit: 3721

applicant regards as the invention. In the last paragraph of claim 1, it is unclear what is encompassed by “dependent upon an angular offset between ...”. Additionally, it appears that the angle between the longitudinal axis of the guide cylinder and the rotation axis of the drive unit depends upon the tilted position of said drive unit with respect to the longitudinal axis of the guide cylinder, rather than the configuration of the cranked rod.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3-9, 11, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ousbäck (USPN 1,901,981) in view of Stirm et al. (USPN 7,331,407), further in view of Rabe (USPN 4,401,419), and further in view of Koehler (USPN 3,650,336).

Regarding claims 1 and 9, Ousbäck discloses an electric power tool, comprising: a drive unit contained in a housing, an impact mechanism, and a handle, including a cam that is driven by the drive unit; the impact mechanism has a piston connected to the drive unit by a rod and movable inside a separate guide cylinder 3 that is stationary in relation to the piston; wherein the longitudinal axis of the guide cylinder 3 and the rotation axis of the drive unit and angled with respect to each other (as shown in the embodiment of fig. 4), but fails to disclose a striker inside the guide cylinder which is stationary in relation to the piston, the striker, and the cam. Stirm shows an electric hammer having a drive unit (511, 514) with a cam 523 and a rod 531, an impact mechanism having a piston 520 and a striker 569 arranged to be moveable inside a guide

Art Unit: 3721

cylinder 530 that is stationary in relation to said piston, striker, and cam (as shown in the embodiment of fig. 6) for the purposes of properly guiding a hammer/impact action to a tool bit (see col. 9, lines 3-24). It would have been obvious to one having ordinary skill in the art to have provided Ousbäck's power tool with a striker and guide cylinder as taught by Stirm in order to efficiently guide a hammer/impact action to a tool bit. Additionally, Stirm shows wherein the piston 520 and the striker 569 have the same diameter (as shown in fig. 6).

With respect to claims 1 and 4, the modified invention of Ousbäck fails to disclose wherein the rod is a cranked rod comprising a cranked section, a first longitudinal segment on a first side of the cranked section and a second longitudinal segment on a second side of the cranked section. Rabe teaches the use of a motion conversion mechanism from a rotary motion to a reciprocating motion having a drive unit with a cam 28, a piston 6, and a cranked rod (24, 25) connecting the piston 6 to the drive unit for the purpose of reducing the overall length and/or size of the device (as shown in col. 2, lines 36-43). It would have been obvious to one having ordinary skill in the art to have provided the modified power tool of Ousbäck further having a cranked rod as taught by Rabe in order to reduce the length and/or size of the power tool.

With respect to claims 1 and 11, the modified invention of Ousbäck fails disclose a Scotch Yoke slider crank provided to transmit force between the cam 7 and the drive unit 6. Koehler teaches the concept of a power tool using the claimed crank slider (as shown in the embodiment of fig. 7; col. 8, lines 74-75, and col. 9; lines 1-3) for the purpose of reducing the overall length of the power tool. It would have been obvious to one having ordinary skill in the art to have provided the modified invention of Ousbäck further having a crank slider as taught by Koehler in order to reduce the overall length of the power tool. Additionally, Koehler shows

Art Unit: 3721

wherein a pin 203 is able to move inside the slider crank, but fails to disclose wherein said pin is a ball. It would have been obvious to one having ordinary skill in the art to have substituted Koehler's pin 203 by a ball in order to facilitate the transmission of reciprocating motion.

Regarding claim 3, Ousbäck shows wherein the piston 12 is a separate component.

Regarding claims 5-6, Ousbäck shows wherein the piston 12 and the drive element 10 are connected to each other by means of a pin 11 (as shown in fig. 4); wherein the pin axis and a rotation axis of 6 are oriented at an angle to each other.

Regarding claim 7, Shor shows a piston and a drive rod capable of being embodied as integrally joined to each other (as shown in the embodiment of fig. 1).

Regarding claim 8, the modified invention of Ousbäck fails to disclose wherein the drive element is made from plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided said drive element comprised of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, and it would be for the benefits of providing a material with the desired rigidity and flexibility for properly transmitting an impact force. In re Leshin, 125 USPQ 416.

Regarding claims 14-15, Stirm's fig 1 shows wherein the drive unit (at the vicinity of 32) is situated centrally with respect to a longitudinal span of the handle 6; and wherein the impact mechanism is embodied as a pot-type piston 520 and a pot-type striker 569.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ousbäck (USPN 1,901,981) in view of Stirm et al. (USPN 7,331,407), further in view of Rabe (USPN 4,401,419), further in view of Koehler (USPN 3,650,336), as apply above in claim 15, and further in view of

Art Unit: 3721

Pyatov (USPN 4,828,046). The modified invention of Ousbäck discloses an electric power tool having a piston substantially as claimed, but fails to disclose wherein said piston is made from a light alloy. Pyatov teaches the concept of a percussion power tool having an impact piston made from a light alloy, i.e. aluminum, for the purpose of provide a piston made from a material which will properly transmit an impact force while enhancing its durability. It would have been obvious to one having ordinary skill in the art to have provided the modified invention of Ousbäck further having a piston made from an alloy as taught by Pyatov to provide durability to the piston.

Response to Arguments

10. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

11. For the reason above, the grounds of rejection are deemed proper.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3721

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michelle Lopez/
Examiner, Art Unit 3721

/Rinaldi I Rada/
Supervisory Patent Examiner, Art Unit 3721